

ORDINANCE NO. 50

AN ORDINANCE ESTABLISHING RULES AND REGULATIONS FOR THE NOTICE,
ASSESSMENT, COLLECTION AND ENFORCEMENT OF CIVIL PENALTIES AND
ESTABLISHING SCHEDULES OF CIVIL PENALTIES.

PUBLIC HEARINGS

MAY 13, 1977 AND MAY 27, 1977

ADOPTED

MAY 27, 1977

MODIFICATIONS

METROPOLITAN SERVICE DISTRICT

ORDINANCE NO. 50

An ordinance establishing rules and regulations for the notice, assessment, collection and enforcement of civil penalties and establishing schedules of civil penalties.

METROPOLITAN SERVICE DISTRICT
BOARD ACTION

NO. 77-822 DATE 5-27-77

	YES	NO	ABST.
BARTELS	<input checked="" type="checkbox"/>		
GORDON	<input checked="" type="checkbox"/>		
McCREADY	<input checked="" type="checkbox"/>		
ROBNETT	<input checked="" type="checkbox"/>		
SALQUIST	<input checked="" type="checkbox"/>		
SCHUMACHER	<input checked="" type="checkbox"/>		
MILLER, CHAIRMAN	<input checked="" type="checkbox"/>		

[Handwritten Signature]
Clerk of the Board

ORDINANCE NO. 50

THE METROPOLITAN SERVICE DISTRICT ORDAINS THE FOLLOWING:

SECTION 1. Purposes.

The purpose of these rules and regulations is to prescribe the procedures and requirements for the notice, assessment, collection and enforcement of civil penalties.

SECTION 2. Definitions.

Unless otherwise required by context, as used in this subdivision:

A. BOARD. Board means the Board of Directors of the Metropolitan Service District.

B. MSD. MSD means the Metropolitan Service District, a municipal corporation established and existing under the laws of the State of Oregon, ORS Chapter 268.

C. DIRECTOR. Director means the Director of an operating division of the MSD.

D. ORDER. Order means (a) any action satisfying the definition given in ORS Chapter 183 or (b) any other action so designated in ORS Chapter 268.

E. PERSON. Person means any individual, public or private corporation, industry, partnership, association, firm, trust, estate, city, county, special district, or local governmental unit and any other legal entity.

F. RESPONDENT. Respondent means the person against whom a civil penalty is assessed.

G. VIOLATION. Violation means a transgression of any provision or condition of any license and includes both acts and omissions.

H. LICENSE. License, as used in this ordinance, has the meaning given that word by ORS 183.310(3) (1975 Replacement Part).

SECTION 3. Consolidation of Proceedings.

Notwithstanding that each and every violation is a separate and distinct offense, and in cases of continuing violation, each day's continuance is a separate and distinct violation, proceedings for the assessment of multiple civil penalties for multiple violations may be consolidated into a single proceeding.

SECTION 4. Notice of Violation and Intent to Assess Civil Penalty.

A. (1) Except as provided in subsection (c) of this section, prior to the assessment of any civil penalty the Director shall serve a written notice of violation and intent to assess civil penalties upon the respondent.

(2) The notice shall be personally delivered or sent by registered or certified mail by an employee of MSD or any other competent person over the age of 18 years to:

(a) The respondent; or

- (b) Any person designated by law as competent to receive service of a summons or notice for the respondent; or
- (c) Following appearance of counsel for the party, the party's counsel.

B. A notice of violation shall specify the violation and state that MSD will assess a civil penalty if the violation continues or occurs after five days following service of the notice.

C. Written notice of violation and intent to assess a civil penalty shall not be required where:

(1) the respondent has otherwise received actual notice of violation not less than five days prior to the violation for which a penalty is assessed.

(2) the violation is of a type that would normally not be in existence for five days or the jurisdiction of MSD to prosecute the violation is liable to be interrupted within that time.

SECTION 5. Mitigating and Aggravating Factors.

A. In establishing the amount of a civil penalty to be assessed, the Director or the Board shall consider the following factors:

(1) Whether the respondent has committed any prior violation, regardless of whether or not any administrative,

civil, or criminal proceeding was commenced therefor;

(2) The history of the respondent in taking all feasible steps or procedures necessary or appropriate to correct any violation;

(3) The economic and financial conditions of the respondent;

B. In establishing whether a civil penalty should be remitted or mitigated, the Director or the Board may consider the following factors:

(1) The gravity and magnitude of the violation;

(2) Whether the violation was repeated or continuous;

(3) Whether a cause of the violation was an unavoidable accident, or negligence, or an intentional act of the respondent;

(4) The opportunity and degree of difficulty to correct the violation;

(5) The respondent's cooperativeness and efforts to correct the violation for which the penalty is to be assessed;

(6) The cost to MSD of investigation and correction of the cited violation prior to the time MSD receives respondent's answer to the written notice of assessment of civil penalty; or

(7) Any other relevant factor.

C. Unless the issue is raised in respondent's answer to the written notice of assessment of civil penalty, the Board may presume that the economic and financial conditions of respondent would allow imposition of the penalty assessed by the Director. At the hearing, the burden of proof and the burden of coming forward with evidence regarding the respondent's economic and financial condition or regarding any factor urged in mitigation shall be upon the respondent.

SECTION 6. Zoo Schedule of Civil Penalties.

In addition to any liability, duty, or other penalty provided by law, the Director may assess a civil penalty for any violation pertaining to the Zoo by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

A. Not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for violation of an order of MSD or its Board.

B. Not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for any violation which causes, contributes to, or threatens the injury of any Zoo animals.

C. Not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for any other violation.

SECTION 7. Solid Waste Schedule of Civil Penalties.

In addition to any liability, duty, or other penalty provided by

law, the Director may assess a civil penalty for any violation pertaining to the transferring, processing or disposal of solid waste by service of a written notice of assessment of civil penalty upon the respondent. The amount of such civil penalty shall be determined consistent with the following schedule:

A. Not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500) for violation of an order of MSD or its Board.

B. Not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500) for any other violation.

SECTION 8. Written Notice of Assessment of Civil Penalty; When Penalty Payable.

A. A civil penalty shall be due and payable when the respondent is served a written notice of assessment of civil penalty signed by the Director. Service of the written notice of Assessment of Civil Penalty shall be in accordance with the service provisions of section 4.

B. The written notice of assessment of civil penalty shall include:

1. A reference to the particular sections of the statute, rule, regulation, standard, order, certificate or permit involved;

2. A short and plain statement of the matters asserted or charged;

3. A statement of the amount of the penalty or penalties imposed; and

4. A statement of the respondent's right to request a hearing.

C. The respondent shall have twenty (20) days from the date of mailing of the notice in which to make written application for a hearing before the MSD.

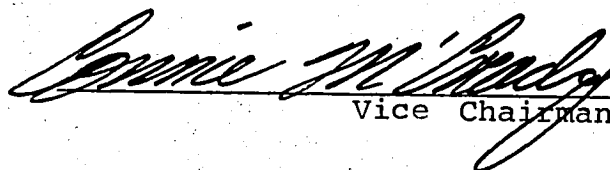
D. All hearings shall be conducted pursuant to the contested case hearing procedures in the MSD code.

E. Unless the amount of the penalty is paid within ten (10) days after the order becomes final, the order shall constitute a judgment and may be filed in accordance with the provisions of ORS 18.320 to 18.370. Execution may be issued upon the order in the same manner as execution upon a judgment of a court of record.

SECTION 9. Compromise or Settlement of Civil Penalty by Director.

At any time subsequent to service of the written notice of assessment of civil penalty, the Director is authorized to seek to compromise or settle any unpaid civil penalty which he deems appropriate. Any compromise or settlement executed by the Director shall not be final until approved by the Board.

METROPOLITAN SERVICE DISTRICT


Vice Chairman